UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 555 4th St., N.W., Room 8104 Washington, D.C. 20001 Plaintiff, v. SPRINT CORPORATION 2330 Shawnee Mission Parkway Westwood, Kansas 66205 and JOINT VENTURE COMPANY, Defendants.	)	Civil Action No. Filed: **[Filed July 13, 1995]**

COMPLAINT FOR JUDGMENT AND INJUNCTIVE RELIEF (ANTITRUST)

The United States of America, acting under the direction of the Attorney General, brings this civil action to obtain equitable and other relief against the above-named defendants, and complains and alleges as follows:

1. Sprint, a major US international and domestic long distance carrier, has entered into an agreement with France Télécom ("FT") and Deutsche Telekom, A.G. ("DT") to create Joint Venture Company ("Joint Venture Co."), an international joint venture that will offer various types of international telecommunications and enhanced telecommunications services. FT and DT have also agreed to purchase a total of 20% of Sprint's stock and will acquire the right to appoint three of Sprint's fifteen directors.

2. FT, which is owned by the government of France, is the state authorized monopoly provider of all public switched voice service, as well as all transmission facilities for domestic and international telecommunications in France. FT also has market power in the provision of public data network services in France. DT, which is owned by the government of Germany, is the state authorized monopoly provider of all public switched voice service, as well as all transmission facilities for domestic and international telecommunications in Germany. DT also has market power in the provision of public data network services.

3. The combination of Sprint, with its international long distance services, and DT and FT, with their monopolies over public voice services and infrastructure and market power in their home markets, may substantially reduce competition in international telecommunications and enhanced telecommunications services markets and injure United States ("US") consumers. This combination will create incentives and opportunities for DT and FT to favor their US affiliate and joint venture over competitors in providing access to their local, domestic long distance and international telecommunications services and facilities and to their public data networks in France and Germany and to take other steps that could lessen competition in international telecommunications services involving France and Germany. The result of this combination is likely to be higher prices and lower quality service for US consumers who need to use international telecommunications services between the US and either France or Germany.

I. JURISDICTION AND VENUE

4. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by the Defendants of Section 7 of the Clayton

Act, as amended, 15 U.S.C. § 18. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Sprint is a Kansas corporation with its headquarters and principal place of business in Westwood, Kansas and is subject to the jurisdiction of this Court under Section 12 of the Clayton Act, 15 U.S.C. § 22. Joint Venture Co. transacts or will transact business in the US, either directly or through its subsidiaries and affiliates and through assets to be transferred to it by Sprint. This Court is authorized, pursuant to 15 U.S.C. § 25, to bring Joint Venture Co. within its jurisdiction.

6. Venue is in the District of Columbia under 15 U.S.C. § 22 and 28 U.S.C § 1391(b) and (c).

II. DEFINITIONS

7. “Correspondent” means a bilaterally negotiated arrangement between a provider of telecommunications services in the United States and a provider of telecommunications services in France, or between a provider of telecommunications services in the United States and a provider of telecommunications services in Germany, by which each party undertakes to terminate in its country traffic originated by the other party, for provision of an international telecommunications or enhanced telecommunications service.

8. "Data service" means a telecommunications service, including public data networks, virtual private networks, private or leased lines, or other value-added network service, that is used primarily to transmit information other than voice or video.

9. "Enhanced telecommunications service" means any telecommunications service that includes as an integral part features in addition to transmission, switching, and other conveyance of information.

10. "Infrastructure" means the equipment and facilities throughout which the principal processes of providing telecommunications service are carried out, and includes any line, trunk, wire, cable, tube, pipe, satellite, earth station, antenna, switch, multiplexer or other equipment or apparatus used or designed or adapted for use in connection with the conveyance, transmission, origination, reception, switching, or other provision of service.

11. "International half-circuit" means the part of an international telecommunications circuit (including a private or leased line) provided by an international telecommunications provider at either end of the circuit.

12. "Investment Agreement" means the agreement between DT, FT and Sprint dated June 22, 1995, by which DT and FT agree to acquire 20% of the shares of Sprint for up to $4.2 billion. Consummation of this agreement will make DT and FT the largest shareholders of Sprint and give them the right to appoint three of Sprint's fifteen directors as well as other special rights.

13. "Joint Venture Agreement" means the agreement between DT, FT and Sprint dated June 22, 1995, by which DT, FT and Sprint agree to create and operate Joint Venture Co. as a joint venture.

14. "Long distance telecommunications services" means telecommunications and enhanced telecommunications services between cities or localities, including both international and domestic services.

15. "Private line" means telecommunications and enhanced telecommunications conveyed over circuits dedicated to a particular customer.

16. "Public data network" means a telecommunications network that (1) primarily or exclusively provides data services, as distinguished from the public switched telephone network that also carries voice services, and (2) offers such data services to the public, rather than for the exclusive use of a single customer or limited group of customers. The principal French public data network is owned and operated by Transpac, an entity controlled by FT. The principal German public data network, which provides various data services under the designation "Datex," is owned and operated by DT.

17. "Public switched network" means a telecommunications network available for public use that carries various telecommunications and enhanced telecommunications services, principally but not exclusively involving voice traffic, and employs a switching system to complete a communications circuit. This term does not include private line services.

18. "Seamless international telecommunications services" means international telecommunications and enhanced telecommunications services available from one provider that retain the same quality, features, characteristics, and capabilities when offered in multiple countries throughout the world. Seamless international telecommunications services can include enhanced virtual private networks and data networks.

19. "Switched" means telecommunications and enhanced telecommunications services that make use of switching facilities and common lines to convey traffic.

20. "Telecommunications service" means the conveyance, by electrical, magnetic, electromagnetic, electromechanical or electrochemical means (including fiber-optics), of

information consisting of any of the following: (1) speech, music and other sounds; (2) visual images; (3) data or other information not in the form of sounds or visual images; (4) actuation and control signals; or (5) translation or conversion that does not alter the form or content of information. "Convey" and "conveyance" include transmission, switching, and receiving. Telecommunications service includes all facilities used in providing such conveyance, and the installation, maintenance, repair, adjustment, replacement and removal of any such facilities.

21. "United States" and "US" mean the fifty states, the District of Columbia, and all territories, dependencies or possessions of the United States.

22. "US-France international telecommunications services" or "US-Germany international telecommunications services" means telecommunications services and enhanced telecommunications services between the United States and France or Germany respectively. These terms include, but are not limited to, correspondent switched services such as the standard voice telephone service known as International Direct Dialed ("IDDD") or International Message Telephone Service ("IMTS"), and International Private Line Service ("IPLS").

III. THE DEFENDANTS AND OTHER RELEVANT ENTITIES

23. Sprint Corporation ("Sprint") is the third largest domestic long distance and international telecommunications carrier in the US, with 1994 revenues of more than $12.6 billion, about half of which come from domestic and international long distance services. Sprint provides long distance telecommunications and enhanced telecommunications products and services in the US and international telecommunications and enhanced telecommunications products and services between the US and other nations, including France and Germany. It carries about 10% of both the domestic voice traffic in the US and the international voice traffic

that originates in the US. Sprint is one of the largest providers of domestic and international data services in the United States, with a market share in data services that is considerably larger than its market share in voice services.

24. Joint Venture Company ("Joint Venture Co.") means all entities to be formed as a joint venture between Sprint, DT and FT under the terms of the Joint Venture Agreement when that agreement is consummated, including the governing bodies of such joint venture. The contemplated business activities and ownership structure of Joint Venture Co. are more fully described in ¶ 39 below. Joint Venture Co., when fully formed pursuant to the Joint Venture Agreement, will receive contributions of nearly $1 billion in business operations and capital from its partners, making it one of the world's largest international telecommunications ventures.

25. France Télécom ("FT") is the fourth largest provider of telecommunications services in the world, and Europe's second largest telecommunications carrier. FT is a public operator doing business pursuant to the law of July 2, 1990, enacted by the Parliament of France. Its principal place of business is Paris, France. Its consolidated annual revenues were 127 billion FF in 1993 and 142.6 billion FF in 1994 ($28.5 billion), and its net income for 1994 was 9.9 billion FF ($2.1 billion). FT owns and operates the French public switched network, with about 32 million telephone access lines in service. It provides local, long distance, and enhanced telecommunications services in France, and international and enhanced telecommunications services between France and other countries, including the US and Germany. FT is wholly owned by and is controlled by the French government, which appoints a majority of FT's governing board. The French government's ownership of FT is held by the Ministry of the Economy and Finance.

26. Deutsche Telekom, A.G. ("DT") is the second or third largest telecommunications company in the world, and Europe's largest telecommunications carrier. Under a German telecommunications law enacted in 1994, DT became a private corporation on January 1, 1995, with the German government presently its sole shareholder. DT's principal place of business is Bonn, Germany. Prior to privatization, DT was a German state-owned public operator, much like FT in France. DT had revenues of 58.988 billion DM in 1993 and revenues of 61.2 billion DM ($44 billion) in 1994. DT owns and operates the German public switched network, with more than 37 million telephone access lines in service, and 87,000 kilometers of fiber optic lines installed, over a third of its total network. DT provides local, long distance, and enhanced telecommunications services in Germany, as well as international and enhanced telecommunications services between Germany and other countries, including the US and France. The German government will remain the majority owner of DT for the next several years, as sale of DT stock to private investors will not begin before 1996 and a majority of the stock will not have been offered for sale until after 1999; there is no definitive time schedule regarding the completion of privatization. A newly created federal agency, under the supervision of the Federal Minister of Posts and Telecommunications, holds the German government's ownership in DT.

IV. TRADE AND COMMERCE

27. The activities of the defendants in the provision of US-France and US-Germany international telecommunications services and of seamless international telecommunications services are within the flow of, and substantially affect, foreign and interstate commerce.

28. Three companies -- AT&T, MCI, and Sprint -- provide almost all US-France and US-Germany international voice telecommunications services in the US. All of these companies are also among the most important providers of international enhanced telecommunications services and data services in the United States, directly or through subsidiaries and affiliates (such as the Concert joint venture between MCI and British Telecommunications plc).

29. US-France and US-Germany international telecommunications services are used by individuals and companies in the US to exchange voice, data and video messages with individuals and companies in France and Germany. No close substitute exists for telecommunications and enhanced telecommunications services between the US and France or the US and Germany, and such services constitute a distinct market or markets for purposes of the antitrust laws.

30. Seamless international telecommunications services will be used by multinational corporations and other users of international telecommunications services in the US to exchange voice, data and video messages with corporate offices, vendors, operations and persons in France and Germany as well as in other countries. Other types of international telecommunications and enhanced telecommunications services provided through the correspondent system will not be substitutes for seamless international telecommunications services as they emerge, as existing services often lack standardization of advanced features between countries that customers prefer. Seamless international telecommunications services, as they emerge, will constitute a distinct market or markets for purposes of the antitrust laws.

V. MARKET POWER OF FT IN FRANCE AND DT IN GERMANY

31. Access to the French public switched network and transmission infrastructure is necessary for international telecommunications and enhanced telecommunications services that originate or terminate in France. FT has a legal monopoly in the provision of French public switched voice telecommunications services and transmission infrastructure, which together account for over 75% of all telecommunications revenues in France. Virtually all international telecommunications traffic between the US and France originates or terminates over FT's public switched network, its transmission infrastructure, or both. Accordingly, any provider of telecommunications or enhanced telecommunications services, or seamless international telecommunications services, whether in the US, France or elsewhere, is and will continue to be dependant on FT for origination and termination of telecommunications between France and anywhere else.

32. FT currently has a monopoly in the provision of both domestic leased lines in France and international half-circuits terminating in France. Third party service providers that want to offer data or value added services between France and the United States must obtain their transatlantic half-circuits terminating in France from FT, which markets such facilities through its wholly owned subsidiary France Cables et Radio ("FCR"). In addition, FT's domestic leased lines in France are an essential input for many services where competition has been permitted in France, such as data services and corporate networks serving closed user groups.

33. FT has a dominant market position and market power in France in providing public data network services. To provide these services, termed bearer services in France,

operators must be individually licensed. FT offers these services through Transpac, a subsidiary that operates several types of data services, including the principal network based on the standard X.25 packet-switched protocol. FT and Transpac had a statutory monopoly in provision of public data network services in France until 1993, when bearer service competition was first permitted. By the most current measures available, Transpac has a 94% share of French domestic data services, and a far more extensive network in France than any other competitor, including 597 node sites and 105,000 customer connections. Other means of delivering data through landline-based private networks, or through satellite-based data telecommunications, are not fully adequate substitutes for FT's public data network in France. FT can be expected to continue to possess a dominant position in public data network services in France, which make substantial use of FT's transmission infrastructure, so long as that infrastructure remains FT's legal or effective monopoly.

34. Access to the German public switched network and transmission infrastructure is necessary for international telecommunications and enhanced telecommunications services that originate or terminate in Germany. DT has a legal monopoly in the provision of German public switched voice telecommunications services and transmission infrastructure, which together account for over 75% of all telecommunications revenues in Germany. Virtually all international telecommunications traffic between the US and Germany originates or terminates over DT's public switched network, its transmission infrastructure, or both. Accordingly, any provider of telecommunications or enhanced telecommunications services, or seamless international telecommunications services, whether in the US, Germany or elsewhere, is and will

continue to be dependent on DT for origination and termination of telecommunications between Germany and anywhere else.

35. DT currently has a monopoly in the provision of both domestic leased lines in Germany and international half-circuits terminating in Germany. Third party service providers that want to provide data or value added services between Germany and the United States must obtain their transatlantic half-circuits terminating in Germany from DT. In addition, DT's domestic leased lines in Germany are an essential input for many services where competition has been permitted in Germany, such as data services and corporate networks serving closed user groups. DT also offers a managed leased line service referred to as DDV that is used by it and its competitors for transmission in much the same way as the monopoly leased line service. Though DT's DDV service has been classified nominally as "competitive" under German law, DT effectively has a monopoly over this transmission infrastructure as well, since there is virtually no actual competition for DDV service.

36. DT has a dominant market position and market power in Germany in providing public data network services. With 833 data nodes and more than 86,500 access lines in its principal packet-switched data service network, Datex-P, which uses the standard X.25 data protocol, DT had a share of more than 80% in packet-switched data network services in Germany in 1994. The next largest provider had less than 10% of the market, and the third largest provider was FT, through its 96.7% interest in its German-based subsidiary Info AG, which had a market share of less than 5%. All other providers of data network services in Germany depend on DT for access to DT's transmission infrastructure, and such access represents 50 - 90% of their costs of doing business. Other means of delivering data through

landline-based private networks, or through satellite-based data telecommunications, are not fully adequate substitutes for DT's public data network services in Germany. DT can be expected to continue to possess a dominant position in public data network services in Germany, which make substantial use of DT's transmission infrastructure, so long as that infrastructure remains DT's legal or effective monopoly.

37. The European Union ("EU"), through its Commission and Council of Ministers, has set January 1, 1998 as the target date by which most member states, including France and Germany, are expected to "liberalize" the existing monopolies on public voice telecommunications services and transmission infrastructure. To achieve that target, however, many specific directives, laws and regulations must still be developed and adopted both by EU bodies and the governments of the member states. This process is only now beginning at the EU level and in France and Germany. The changes to be adopted include not only the formal lifting of the legal monopolies, but also the establishment of conditions for licensing of competitors and the development of interconnection rights and requirements for the public switched networks of FT and DT. Neither the EU nor the German and French governments have resolved these issues. Mere lifting of the legal prohibitions on competition would not alone bring about real competition, since actual competitors must also be licensed to operate.

VI. THE TRANSACTIONS AT ISSUE

38. On June 22, 1995, Sprint entered into the Investment Agreement and the Joint Venture Agreement with FT and DT. The Investment Agreement provides for the acquisition of 87.2 million shares of Sprint Class A stock by DT and FT. This would, if fully consummated, be an acquisition of 20% of the equity of Sprint by FT and DT, which would hold their interests

in Sprint separately, and would become Sprint's largest shareholders. The total value of the investment could be as large as $4.2 billion, depending on the market value of the stock when acquired. FT and DT would have various special rights in Sprint, and would gain the right to appoint two directors on Sprint's fifteen-member board immediately, and an additional director upon full consummation of the stock purchase, for a total of three directors.

39. The Joint Venture Agreement provides for the creation of Joint Venture Co., which consists of several entities that will be joint ventures between Sprint, FT and DT. The interests of DT and FT in Joint Venture Co. are expected to be held jointly and managed by their own joint venture, known as Atlas, which will be owned 50% by DT and 50% by FT. Sprint, DT, and FT will have equal representation on Joint Venture Co.'s Global Venture Board, which will determine the strategic direction and oversee operations of Joint Venture Co. The international telecommunications facilities of Joint Venture Co., including switches, other transmission equipment, computer hardware and software, and leased lines, will form an international "backbone" network used to carry the joint venture's services. This backbone network will be owned 50% by Sprint and 50% by DT and FT through Atlas. The Joint Venture Co. entity responsible for worldwide activities outside the United States and Europe (the "Rest of World" or "ROW" entity) will have the same ownership structure as the backbone network. The Joint Venture Co. entity responsible for activities in Europe but outside of France and Germany (the "Rest of Europe" or "ROE" entity) will be owned 33⅓ % by Sprint and 66⅔ % by DT and FT through Atlas. Sprint will have the exclusive right to provide Joint Venture Co. services in the United States, its home country, and FT and DT are to refrain from competing with Sprint in the United States. Similarly, Sprint is to refrain from competing with FT and DT in their home

countries, France and Germany. Moreover, none of the owners of Joint Venture Co. will compete with Joint Venture Co. As part of the joint venture formation, each of the parties will contribute most of their existing operations outside their respective home countries to Joint Venture Co. Initially, Joint Venture Co. will offer (i) international data, voice and video business services for multinational corporations and business customers, (ii) international consumer services based on card services for travelers and (iii) carrier's carrier services including transport services for other carriers.

VII. <u>VIOLATIONS ALLEGED</u>

40. The Investment Agreement and Joint Venture Agreement entered into by Sprint on June 22, 1995 may substantially lessen competition in foreign and interstate commerce in telecommunications and enhanced telecommunications services in violation of Section 7 of the Clayton Act, in the following ways:

(a) FT and DT will have the ability substantially to lessen competition in the markets for US-France and US-Germany international telecommunications services and for seamless international telecommunications services because Joint Venture Co.'s and Sprint's competitors in those markets must have access to the French and German public switched networks, infrastructure and public data networks to provide competitive services, and access to these services and facilities is controlled by FT and DT. After consummation of the Joint Venture Agreement and the Investment Agreement, FT and DT would benefit, through their ownership interests, in the competitive success of the services offered by Joint Venture Co. Moreover, because of the restrictions in the agreements on the ability of DT and FT to compete with Joint Venture Co. and Sprint, the only way that DT and FT could participate in the markets for those services in the United States would be through Joint Venture Co. and Sprint. DT and FT will therefore have an increased incentive and ability to use their market power in the provision of local and domestic and international long distance telecommunications services, transmission infrastructure and public data networks in France and Germany to discriminate in favor of Joint Venture Co. and Sprint and against other US international telecommunications and enhanced telecommunications providers. Such discrimination could raise the costs of competitors compared with Sprint and Joint Venture Co., and diminish the quality and quantity of competitors' services compared with Sprint and Joint Venture Co., substantially lessening competition in the markets for US-France and US-Germany international telecommunications services and seamless international telecommunications services.

(b) In addition, FT and DT will have an incentive to favor Joint Venture Co. and Sprint over their competitors, particularly new entrants and providers of new services, by denying operating agreements to the competitors, or by offering such agreements only on discriminatory terms. In order to have international traffic terminate in France or Germany through the correspondent system, an international carrier must enter into an operating agreement with FT or DT, and FT and DT can choose which carriers receive those agreements. The correspondent system is the only way to send public switched voice traffic, which represents the great majority of all telecommunications traffic, to France or Germany today, because of the FT and DT public switched voice monopolies. If new entrants and providers of new services are refused operating agreements with FT and DT, that could substantially lessen competition in the markets for US-France and US-Germany international telecommunications services.

(c) FT and DT, as a result of the proposed agreements, will have an increased incentive and ability to direct their switched telecommunications traffic from France and Germany disproportionately to Sprint rather than other US international carriers, either directly as part of the correspondent system, or outside that system through the Joint Venture Co. backbone network. Because US international telecommunications carriers typically send more traffic to France and Germany than they receive, they must make net settlement payments to FT and DT for delivery of their switched traffic. Disproportionate diversion of traffic from FT and DT to Sprint would increase the liability of Sprint's competitors to FT and DT for settlements paid on the net amounts of traffic sent and received between the US and France or Germany, and would raise competitors' costs of carrying such traffic, thereby increasing Sprint's ability to charge higher prices to consumers for such traffic as well as substantially lessening competition in international telecommunications services in the US.

(d) DT and FT will also have an increased incentive and ability to cross-subsidize Joint Venture Co. and Sprint by providing revenues from the monopoly services or by shifting costs of Joint Venture Co. and Sprint to the monopoly services. In both France and Germany, over three quarters of the revenues of FT and DT are derived from services and facilities legally protected against competition. These monopoly activities can be used to cross-subsidize competitive services. Such cross-subsidization would facilitate a strategy of placing competitors of Joint Venture Co. and Sprint in a "price squeeze" by keeping prices for the monopoly inputs they need well above true economic costs, while simultaneously undercutting them on price in the competitive markets through Joint Venture Co. and Sprint, whose costs will have been artificially reduced. The result could be a substantial lessening of competition in international telecommunications services and seamless international telecommunications services in the US.

(e) Finally, FT and DT will have an increased incentive and ability to provide Sprint or Joint Venture Co. with confidential information that they obtain from Sprint's and Joint Venture Co.'s competitors, giving them substantial competitive advantages and facilitating price collusion. DT and FT obtain this confidential information from correspondent carriers and other providers that must interconnect with their French and German public switched networks or obtain transmission infrastructure from them. This information, which has considerable competitive value, includes competitors' plans to introduce or change services, competitors' projected traffic flows, competitors' planned prices, and the identities of competitors' private line customers. Disclosure of this competitively sensitive information from competitors to Sprint and Joint Venture Co. could substantially lessen competition in international telecommunications services and seamless international telecommunications services in the US.

VIII. PRAYER

WHEREFORE, plaintiff prays:

1. That the transactions contemplated by the Investment Agreement and Joint Venture Agreements be adjudged a violation of Section 7 of the Clayton Act.

2. That an injunction be issued against the sale by defendant Sprint of any of its shares to FT and DT and against defendant Sprint's participation in and ownership of a portion of Joint Venture Co. and that plaintiff be granted such other relief as this case may require and as this Court may deem just and proper.

3. That in the event that any defendants are not found or transacting business within this judicial district, that this Court issue summons to such defendants to bring them within the jurisdiction of this Court pursuant to 15 U.S.C. § 25.

4. That the plaintiff recover the costs of this action.

Dated: July 13, 1995

[s]

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